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Nicholas M. Boivin, Reg. No. 45,650

Name of applicant, assignee or
Registered Representative

Signature
April 1, 2005

Date of Signature

Our Case No. 10743-6 (BH-6)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Keith Wood et al.)
Serial No.: 09/813,279) Examiner: Louise N. Leary
Filing Date: March 19, 2001) Group Art Unit No.: 1654
For: Method for Detection of ATP)
)
)

APPLICATION FOR CORRECTION OF PATENT TERM ADJUSTMENT

UNDER 37 C.F.R. § 1.705(b)

Mail Stop Patent Ext.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

U.S. Patent Application No. 09/813,279 was allowed on January 10, 2005 with a published term adjustment under 35 U.S.C. § 154(b) of 0 days. For the reasons stated herein, Applicants request correction of the Patent Term Adjustment ("PTA") to 589 days.

REMARKS

U.S. Patent Application No. 09/813,279 was allowed on January 10, 2005 with a published term adjustment under 35 U.S.C. § 154(b) of 0 days. Applicants herein apply to the U.S. Patent and Trademark Office ("USPTO") for correction of the Patent Term Adjustment calculation pursuant to 37 C.F.R. § 1.705(b). Applicants have enclosed a check for the fee under 37 C.F.R. § 1.18(e) for filing this Application for Correction of Patent Term Adjustment. In the event that additional funds are required for the fee for Application for Correction of Patent Term Adjustment under 37 C.F.R. § 1.18(e), please charge any additional necessary fee to Deposit Account No. 23-1925. Please credit for any excess fee paid to Deposit Account No. 23-1925. A duplicate copy of this Application for Correction of Patent Term Adjustment is attached.

The patent term adjustment for U.S. Patent Application No. 09/813,279 is calculated as discussed below. Dates are specified based on the Patent Application Information Retrieval (PAIR) system Patent Term Adjustment History (attached at **Tab A**).

Note that U.S. Patent Application No. 09/813,279 is not subject to a terminal disclaimer.

37 C.F.R. § 1.703(a)(1) Period of Examination Delay

Applicants agree with the USPTO calculation of the period of adjustment under 37 C.F.R. § 1.703(a)(1) of 380 days. The present application was filed under 35 U.S.C. § 111(a) on March 19, 2001. 37 C.F.R. § 1.703(a)(1) states that the period of adjustment under 37 C.F.R. § 1.702(a) includes the number of days beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. § 111(a). In this case, May 19, 2002 is fourteen months after March 19, 2001. However, the first action under 35 U.S.C. § 132 was not mailed by the USPTO until June 3, 2003. Therefore, Applicant believes the period of adjustment under **37 C.F.R. § 1.703(a)(1)** should be 380 days (days in excess of fourteen months between filing of the present application and the mailing of the first action by the USPTO).

37 C.F.R. § 1.703(b) Period of Examination Delay

The period of patent term adjustment pursuant to 37 C.F.R. § 1.703(b) is the number of days in the period beginning on the day ("the 3 year date") after the date that is three years after the date on which the application was filed pursuant to 35 U.S.C. § 111(a) or fulfilled the requirements of 35 U.S.C. § 371.

The present application was filed on March 19, 2001, as evidenced by the filing receipt attached at **Tab B**. The 3 year date specified by 37 C.F.R. § 1.703(b) is March 19, 2004. A Request for Continued Examination ("RCE") was filed on November 29, 2004. On the date of mailing of the Notice of Allowance on January 10, 2005, the present application is believed to have exceeded the combined total of the 3 year date and the total amount of delay by **252 days** (from the March 19, 2004 3 year date to the November 29, 2004 RCE filing).

37 C.F.R. § 1.704 Reduction in Period of Adjustment

With respect to the grounds for adjustment set forth in 37 C.F.R. § 1.703(a)-(e), an applicant is deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods or time in excess of three months that are taken to reply to any notice or action by the Office. Any such three month period is measured from the date the notice or action was mailed to the applicant. The period of adjustment set forth in 37 C.F.R. § 1.703 shall be reduced by the number of days beginning on the day ("the 3 month date") after the date that is three months after the date of mailing of the Office communication.

Applicants respectfully assert that the U.S. Patent and Trademark Office has improperly assessed a **446 day** Reduction in Period of Adjustment under 37 CFR § 1.704, instead of a 35 day Reduction. The error in the 446-day Reduction in PTA assessed by the USPTO is related to the filing of a series of responses to three U.S. Patent and

Trademark Office requests for Sequence Listings in computer readable format. Applicants have submitted fully compliant Sequence Listings on three separate occasions.

Error in USPTO Reduction in Period of Adjustment under 37 CFR § 1.704

A Notice to File Missing Parts was mailed on May 23, 2001 ("Missing Parts Notice"). The Missing Parts Notice recited, among other items, a failure to provide a copy of the Sequence Listing in computer readable format and a corresponding Statement under 37 CFR § 1.821(f) ("Statement") that the Sequence Listing corresponds to the Sequence recited in the above referenced application as filed.

Applicant timely filed a Response to the Missing Parts Notice that contained, among other things, the Sequence Listing in computer readable format along with the required Statement ("First Response"). The First Response was received by the USPTO on July 26, 2001 (See Postcard at **Tab C**), less than three months after the Missing Parts Notice was mailed. The First Response included a computer disk containing a Sequence Listing in computer readable format that Applicants respectfully assert was both computer readable and fully compliant with 37 CFR §§ 1.821-1.822. Therefore, no Applicant delay was incurred in responding to the Missing Parts Notice.

On October 22, 2001, a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures was mailed ("First Sequence Listing Notice"). The First Sequence Listing Notice requested the filing of a second substitute computer readable Sequence Listing and Statement.

On January 30, 2002, Applicants' fully compliant response to the First Sequence Listing Notice was received by the U.S. Patent Office (See Postcard at **Tab D**). In fact, on December 18, 2001, Applicants mailed the substitute Sequence Listing and Statement ("Second Response") containing a second computer disk containing a Sequence Listing in computer readable format that Applicants respectfully assert was computer readable and fully compliant with 37 CFR §§ 1.821-1.822.

Despite having timely mailed the Second Response less than three months after the First Sequence Listing Notice was mailed, the Second Response was not received

until January 30, 2002, over a month after the mailing date. Accordingly, under 37 CFR § 1.704(b), Applicants are assessed a Reduction in Period of Adjustment of 8 days, through no fault of the Applicants, in replying to the First Sequence Listing Notice.

On October 1, 2002, a second Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures was mailed ("Second Sequence Listing Notice"). The Second Sequence Listing Notice requested the filing of a third substitute computer readable Sequence Listing and Statement.

On November 13, 2002, Applicants' fully compliant response to the Second Sequence Listing Notice was received by the U.S. Patent and Trademark Office (See Postcard at **Tab E**), that contained, among other things, the Sequence Listing in computer readable format along with the required Statement ("Third Response"). The Third Response was received by the USPTO less than three months after the Missing Parts Notice was mailed. The Third Response included a computer disk containing a Sequence Listing in computer readable format that Applicants respectfully assert was both computer readable and fully compliant with 37 CFR §§ 1.821-1.822. Therefore, no Reduction in Period of Adjustment was incurred in responding to the Second Sequence Listing Notice.

Corrected 43-day Reduction in Period of Adjustment under 37 CFR § 1.704(b)

A Notice of Allowance was mailed on January 10, 2005. In reviewing the Notice of Allowance and the Patent Term Adjustment History on the PAIR page of the U.S. Patent and Trademark Office Website (See **Tab A**), Applicants noticed the period for Reduction in Period of Adjustment under 37 CFR § 1.704 was improperly calculated as 481 days, the sum of the incorrectly alleged 446 day Reduction in Period of Adjustment ("Reduction") related to the filing of Sequence Listings as discussed above, and a 35 day Reduction related to the filing of an Information Disclosure Statement.

The PTO incorrectly assessed 446 days instead of 8 days of Reduction in Period of Adjustment related to the Sequence Listing Filings discussed above (from the mailing date of the Notice of Missing Parts on May 23, 2001 to the date the application was deemed complete on December 11, 2002).

Applicants acknowledge that the U.S. Patent and Trademark Office has assessed a further Reduction in Period of Adjustment of 35 days under 37 CFR § 1.704(d) relating to the filing of an Information Disclosure Statement received by the U.S. Patent and Trademark Office on September 29, 2003.

Thus, only a 43 day total Reduction in Period of Adjustment under 37 CFR § 1.704 (8 days related to sequence listing filings, 35 days due to filing the September 29, 2003 IDS, as discussed above) should have been assessed, rather than a 481 day Reduction as the U.S. Patent and Trademark Office calculated.

Corrected Total Patent Term Adjustment

For the present application, the total Patent Term Adjustment ("PTA") under 37 C.F.R. § 1.703(f) is the period of adjustment under 37 C.F.R. § 1.703 reduced by the reduction under 37 C.F.R. § 1.704.

The total PTA under 37 C.F.R. § 1.703 is 632 days (252 days under 37 C.F.R. § 1.703(b), from the March 19, 2004 3 year date to the November 29, 2004 RCE filing, and 380 days under 37 C.F.R. § 1.703(a)(1), the number of days in excess of fourteen months between filing of the present application and the mailing of the first action by the USPTO)

The total PTA reduction under 37 C.F.R. § 1.704 is 43 days, as described above.

Therefore, Applicant respectfully submits that in the present application, the correct total Patent Term Adjustment ("PTA") under 37 C.F.R. § 1.703(f) is the 632 day period of adjustment under 37 C.F.R. § 1.703 reduced by the 43 day reduction under 37 C.F.R. § 1.704, for a total of 589 days PTA.

Request for Subsequent Determination of Patent Term Adjustment under 37 C.F.R. § 1.705(d)

Applicants respectfully request that the determination of Patent Term Adjustment be corrected prior to issuance of the above-referenced application. Applicant reasonably anticipates that additional non-overlapping delay is expected prior to the patent issuing for the present application. Applicant therefore respectfully requests re-computation of the

PTA pursuant to 37 C.F.R. § 1.703 upon identification of the date of issue of the patent of the present application to reflect any additional delay. With this request, Applicant further reserves the right to request reconsideration of the PTA pursuant to 37 C.F.R. § 1.705(d) if the term of the issued patent is believed to be extended or adjusted incorrectly.

Respectfully submitted,



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Attorney for Applicants

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PATENT APPLICATION INFORMATION RETRIEVAL

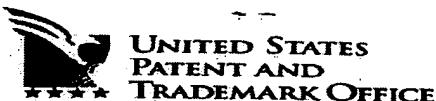
Patent Term Adjustment (PTA) for publication number: 09/813,279		
		Days
Filing or 371(c) Date:	03-19-2001	USPTO Delay (PTO): 380
Issue Date of Patent:	-	Three Years: -
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL): 481
Post-Issue Petitions (days):	+0	Total PTA: 0
USPTO Adjustment (days):	+0	Explanation of Calculations

Search Options

Continuity Data
Image File Wrapper
File History
Published Documents

Patent Term Adjustment History			
Date	Contents Description	PTO (days)	APPL (days)
01-10-2005	Mail Notice of Allowance		
01-07-2005	Issue Revision Completed		
01-07-2005	Notice of Allowance Data Verification Completed		
01-07-2005	Notice of Allowability		
11-29-2004	Workflow - Request for RCE - Finish		
12-08-2004	Date Forwarded to Examiner		
11-29-2004	Request for Continued Examination (RCE)		
12-08-2004	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		
11-29-2004	Information Disclosure Statement (IDS) Filed		
11-29-2004	Workflow incoming amendment IFW		
11-29-2004	Workflow - Request for RCE - Begin		
11-30-2004	Record Petition Decision of Granted to Withdraw from Issue		
11-29-2004	Petition Entered		
11-29-2004	Workflow - Request for RCE - Begin		
06-14-2004	Miscellaneous Incoming Letter		
10-06-2004	Receipt into Pubs		
07-26-2004	Issue Fee Payment Received		
06-14-2004	Workflow incoming petition IFW		
05-26-2004	Sequence Forwarded to Pubs on Tape		
05-24-2004	Receipt into Pubs		
05-20-2004	Workflow - File Sent to Contractor		
05-04-2004	Mail Notice of Allowance		
05-03-2004	Issue Revision Completed		
05-03-2004	Notice of Allowance Data Verification Completed		

05-03-2004	Notice of Allowability		
02-17-2004	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received		
02-24-2004	Date Forwarded to Examiner		
02-17-2004	Response after Non-Final Action		
11-28-2003	Mail Non-Final Rejection		
11-17-2003	Non-Final Rejection		
09-29-2003	Information Disclosure Statement (IDS) Filed	35	
09-03-2003	Date Forwarded to Examiner		↑
08-25-2003	Response after Non-Final Action		↑
06-03-2003	Mail Non-Final Rejection	380	
06-02-2003	Non-Final Rejection		↑
04-17-2003	Case Docketed to Examiner in GAU		↑
03-03-2003	Information Disclosure Statement (IDS) Filed		↑
02-27-2003	Case Docketed to Examiner in GAU		↑
12-12-2002	Application Dispatched from OIPE		↑
12-11-2002	Application Is Now Complete		↑
11-12-2002	Additional Application Filing Fees	446	↑
11-12-2002	CRF Disk Has Been Received by Preexam / Group / PCT		↑
12-09-2002	CRF Is Good Technically / Entered into Database		↑
10-01-2002	SEQUENCE ERRORS		↑
01-30-2002	Additional Application Filing Fees		↑
01-30-2002	CRF Disk Has Been Received by Preexam / Group / PCT		↑
03-08-2002	CRF Does Not Match Application Specification -- Applicant Must Correct		↑
10-22-2001	SEQUENCE ERRORS		↑
09-12-2001	CRF Is Flawed Technically / Not Entered into Database		↑
05-23-2001	Notice Mailed--Application Incomplete--Filing Date Assigned		↑
05-23-2001	Correspondence Address Change		↑
04-04-2001	IFW Scan & PACR Auto Security Review		↑
03-19-2001	Initial Exam Team nn		↑



Commissioner for Patents
Washington, DC 20231
www.uspto.gov

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	DRAWINGS	TOT CLAIMS	IND CLAIMS
09/813,279	03/19/2001	1645	1622	10743/6	2	59	4

757
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P.O. BOX 10395
CHICAGO, IL 60611

CONFIRMATION NO. 1759
UPDATED FILING RECEIPT



OC000000009227250

Date Mailed: 12/11/2002

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Keith Wood, Madison, WI;
Rita Hannah, Madison, WI;
Richard A. Moravec, Oregon, WI;

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/269,526 02/16/2001

Foreign Applications

If Required, Foreign Filing License Granted: 05/23/2001

Projected Publication Date: 03/20/2003

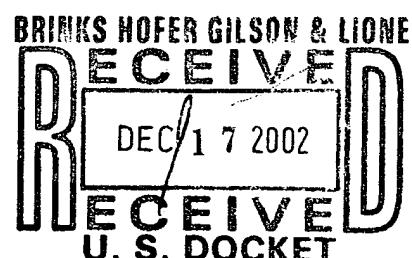
Non-Publication Request: No

Early Publication Request: No

Title

Method for detection of ATP

Preliminary Class



**LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15**

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The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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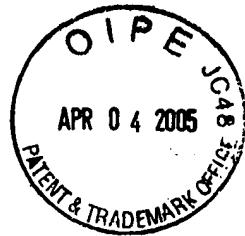
Case No: 10743/6
Serial No.: 09/813,279
Applicant: Keith Wood et al.

Please acknowledge receipt of the below identified:

Items Mailed: Transmittal Letter (in duplicate); Response to Notice to File Missing Parts; Copy of Notice to File Missing Parts; Check for \$40; Assignment Recordal Cover Sheet; Assignment, Declaration; Power of Attorney; Statement According to 37 C.F.R. § 1.821(f); Sequence Listing; Diskette; and Return Postcard Evidencing Receipt of Same.

Date of Mailing: July 23, 2001

BRINKS HOFER GILSON & LIONE
Thomas J. Wrona/fi



Case No. 10743/4
Applicant *Keith Wood et al.*

Hon. Commissioner of Patents & Trademarks
Washington, D.C. 20231

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Serial No: **Keith Wood et al.**

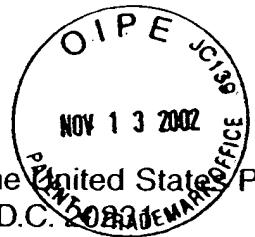
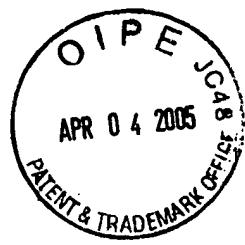
Transmittal letter (in duplicate); Statement According to 37 C.F.R. 1.821 (f); Sequence Listing; Diskette containing Sequence Listing; and postcard evidencing same

BRINKS HOFER GILSON & LIONE

By: **Gregory M. Zinkl, Ph.D.**

Date of Mailing: **December 18, 2001**





Case No. 10743/6
Applicant Wood

Director of The United States Patent & Trademark Office
Washington, D.C. 20231

Please acknowledge receipt of the below-identified:

Serial No 09/813,279

Items Mailed Response to Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence; copy of Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence; Statement Verifying Identical Paper and Computer Readable Copy, two (2) floppy disks containing computer readable copy of sequence listing; paper copy of sequence listing; transmittal letter (in duplicate) and postcard evidencing receipt

BRINKS HOFER GILSON & LIONE
By: J. Matthew Buchanan, Reg. No.47,459
Date of Mailing November 11, 2002